Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author:	Figueroa	Analyst:	Nicole Kwon	Bill Number:	SB 577
Related Bills:	See Legislative History	Telephone:	845-7800	Amended Date:	April 18, and May 4, 2005
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT:	State Government Operations Accountability/State Agencies Participate In CAL-Card Program & Certify Prior To Contracting Out Any State Services/FTB & DOF Report To Legislature On Effectiveness Of "Tax Expenditures"

SUMMARY

This bill would place certain duties and responsibilities on state agencies to promote fiscal responsibility.

This analysis addresses only those provisions of the bill affecting the Franchise Tax Board (FTB).

SUMMARY OF AMENDMENTS

The April 18 and May 4, 2005, amendments would require the following:

A. FTB and the Department of Finance (DOF) to submit to the Legislature a report on the effectiveness of tax expenditures.
B. All state agencies to participate in the CAL-Card Program for purchases up to $5,000 and use the California Automated Travel Expense Reimbursement System (CalATERS).
C. All state agencies to use the State Contract and Procurement Registration System
D. All state agencies to certify prior to contracting out any state service that the service cannot be performed by current state employees or programs at the same or less cost.
E. The Department of Motor Vehicles (DMV) to develop and administer an amnesty program for persons subject to vehicle license fees for a specified period.

Each item is discussed separately below.

This is the department's first analysis of this bill.

PURPOSE OF THE BILL

According to the author's office, the purpose of the bill is to identify and address issues raised in the California Performance Review to improve the way state government operates.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2006. However, the bill states that FTB and DOF would make the first report on the effectiveness of tax expenditures to the Legislature by January 1, 2008.

Board Position:			Department Director	Date
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POSITION

Pending

A. FTB and DOF to Submit a Report on Tax Expenditures.

ANALYSIS

CURRENT STATE LAW

State law requires all state agencies to submit to the Governor a complete plan and itemized statement of all proposed expenditures and estimated revenues for the ensuing fiscal year. Included is a comparison of each item of revenues and expenditures with the actual revenues and expenditures for the last completed fiscal year. The Governor is required to submit a budget within the first 10 days of the regular session of the Legislature. The Governor's budget is developed using the state agency information described above.

State law requires DOF to provide an annual report to the Legislature on tax expenditures providing details on individual categories of the expenditures and historical information on the enactment and repeal of those expenditures.

FTB also prepares an Annual Report of the department's major program activities during the prior calendar year. In response to a request from Carole Migden, a former Member of the FTB and former Chair of the State Board of Equalization, a report dated September of 2003 was prepared by FTB presenting expenditure-specific analysis of tax expenditures items that are currently part of the California franchise and income tax system.

THIS BILL

This bill would require FTB and DOF to submit to the Legislature a report on the effectiveness of tax expenditures by January 1, 2008.

IMPLEMENTATION CONSIDERATIONS

It is unclear what is intended by the phrase "the effectiveness of tax expenditures." The term "effectiveness" could be determined using varying criteria. Therefore, the department would need to make assumptions regarding the term "effectiveness," which may or may not reflect the author's intent.

LEGISLATIVE HISTORY

AB 168 (Ridley-Thomas, 2005/2006) would require several state agencies to provide reports on tax expenditures. AB 168 is currently in Assembly Appropriations.

AB 94 (Haynes, 2005/2006) would require state agencies, boards, commissions, departments, and offices to provide a report regarding financial activities to specific legislative committees for fiscal years 2000/2001 through 2004/2005 and for all subsequent fiscal years. AB 94 failed to pass out of the house of origin.

OTHER STATES' INFORMATION

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota,* and *New York.* These states were selected due to their similarities to California's economy, business entity types, and tax laws.

Illinois, *Michigan*, and *New York* require a tax expenditure report to be submitted by the respective Governor of each state to the Legislature every year.

Minnesota requires the commissioner of revenue to prepare a tax expenditure budget report for the state. The report contains the amount of tax revenue foregone for each tax expenditure, the legal authority for each tax expenditure, and the year in which each was enacted. The report is submitted to the Legislature by February 1 of each even-numbered year.

There was no information available for *Florida* and *Massachusetts* pertaining to this issue.

FISCAL IMPACT

If the implementation considerations addressed in this analysis are resolved, the department's costs are expected to be minor.

ECONOMIC IMPACT

Revenue Estimate

This bill would not impact the amount of income tax revenue.

B. The CAL-Card Program and CalATERS

CURRENT STATE LAW

A state agency may contract for various services in accordance with requirements outlined in the Public Contract Code, including the State Contract Act, the State Administrative Manual, and rules of the Department of General Services (DGS).

Current state law requires DGS to approve a state agency's method of acquisition and procedures followed for procurement. DGS must maintain appropriate criteria and procedures to ensure compliance with the law.

DGS entered into a Master Services Agreement with U.S. Bank, IMPAC (International Merchant Purchase Authorization Card), and Government Services for VISA card services effective through December 22, 2006. This is the basis for the CAL-Card Program that allows state and local agencies to use the VISA card for making purchases of goods and services up to $25,000 per transaction. The CAL-Card Program is flexible to allow participants to tailor the program to meet their individual card needs.

CalATERS provides a comprehensive statewide solution for effectively managing travel claim processing. Departments using CalATERS will achieve efficiency through automation and will reduce the time required to process travel advance and expense reimbursement payments.

THIS BILL

This bill would require all state agencies to do the following:

- Participate in the CAL-Card program for purchases up to $5,000.
- Use CalATERS by July 1, 2006, and require DOF to establish a system by February 1, 2006, for reimbursing CalATERS support costs.

IMPLEMENTATION CONSIDERATION

Since FTB already participates in the CAL-Card program for purchases up to $5,000 and is already working on participating in CalATERS, implementing this bill would not significantly impact the department's programs and operations.

ECONOMIC IMPACT

Revenue Estimate

This bill would not impact the amount of income tax revenue.

C. State Contract and Procurement Registration System (SCPRS)

CURRENT STATE LAW

Current state law requires DGS to approve a state agency's method of acquisition and procedures followed for procurement. DGS must maintain appropriate criteria and procedures to ensure compliance with the law.

Current state law, effective July 1, 2003, requires all state agencies to enter summary information via the internet regarding all purchases or contracts over $5,000. This information is electronically filed, thus creating an accurate database of all significant state agency purchases on a near real time basis. The SCPRS is an internet-based application that receives information submitted electronically by state agencies engaged in contracting and purchasing activities. Currently, FTB already uses the SCPRS to report processes of purchasing goods and services over $5,000.

THIS BILL

This bill would require all state agencies to use the SCPRS. The purpose of the SCPRS is to identify, develop, and distribute a system to facilitate the registration of contract information of state agencies for DGS.

ECONOMIC IMPACT

Revenue Estimate

This bill would not impact the amount of income tax revenue.

D. Contracting Out of State Services

CURRENT STATE LAW

A state agency may contract for various services in accordance with requirements outlined in the Public Contract Code, including the State Contract Act, the State Administrative Manual, and rules of DGS.

Current state law authorizes FTB to enter into agreement(s) with one or more private persons, companies, associations, or corporations providing debt collection services outside this state with respect to the collection of taxes, interest, additions to tax, and penalties. At the discretion of FTB, the agreement may provide the rate of payment and the manner in which compensation for services shall be paid.

PROGRAM BACKGROUND

Current state law authorizes FTB to use private collection agencies (PCAs) to collect delinquent taxes. PCAs are paid a percentage of every dollar they collect (the percentage is determined by their contract) rather than a flat fee.

FTB's Contract Collections Group currently uses the low-bid process to award contracts to vendors. Contracts are awarded to the PCA(s) submitting the lowest bid for one year with options to renew for two subsequent years (for a total of three years). The Contract Collections Group is scheduled to issue a new Debt Profile to request bids in June 2005. Contract Collections Group is also in the process of requesting approval from the DGS to switch from the low-bid method to the point-count method of contracting for the next contract process. It is not known at this time how long it will take to secure approval, but the next contract process is tentatively scheduled for 2007.

THIS BILL

This bill would require all state agencies to certify prior to contracting out any state service that the service cannot be comparably performed at the same or less cost by current state employees or programs.

IMPLEMENTATION CONSIDERATION

The department has identified the following implementation concern.

The current practice of the low-bid method appears to conflict with this bill. Under the low-bid method (regulated by Public Contract Code), all bids are opened publicly at the same time, and FTB must award the contract to the lowest bidder. Under this bill, if the lowest bid is at a higher cost than FTB's cost to collect the same account, FTB could not legally award the contract to the lowest bidder.

LEGISLATIVE HISTORY

SB 145 (Figueroa, 2003/2004) would have prohibited the state from contracting for services with a contractor that would employ persons or subcontractors to complete those services outside of the United States. This bill was held in the Senate Appropriations Committee.

AB 1121 (Cardoza, 2001/2002) and AB 2375 (Cardoza, 2001/2002) were identical and would have prevented certain foreign corporations from being awarded state contracts for public works, goods, or services. Both bills were held in the Senate Judiciary Committee.

OTHER STATES' INFORMATION

Currently 28 states have introduced legislation regulating or prohibiting state contracts from being outsourced. The legislative websites of *Florida, Illinois, Massachusetts, Michigan, Minnesota,* and *New York* were surveyed*.* These states were selected due to their similarities to California's economy and business entity types.

- A review of the legislative web sites of *Florida* and *Massachusetts* did not reveal any pending legislation restricting outsourcing or expatriate transactions.
- *Illinois* and *Minnesota* introduced legislation that would require state contractors to certify that their employees are required to work in the United States.
- *Michigan* introduced legislation to address outsourcing. The governor signed an executive directive prohibiting state departments and agencies from spending state or federal funds to provide financial incentives to relocate out of the United States. The state is currently required to extend legal preferences to Michigan-produced goods and services over those of other states and countries.
- *Minnesota* introduced legislation that would prohibit state contracts to foreign-based call centers.
- *Minnesota* and *New York* introduced legislation that would require a customer's consent to transfer personal data overseas.
- *New York* introduced legislation that would disallow any developmental assistance, including tax relief, worker's compensation, and regulatory benefits to entities that relocate positions, jobs, or employment from the State of New York to an outside locality.

FISCAL IMPACT

The department's costs to administer this bill cannot be determined until implementation concerns have been resolved, but are anticipated to be significant. This bill would require a major change to the existing contract process in the department. The additional costs have not been determined at this time. As the implementation plan is further developed, an estimate of department costs will be completed.

ECONOMIC IMPACT

<u>Revenue Estimate</u>

This bill would not impact the amount of income tax revenue.

ARGUMENTS/POLICY CONCERNS

Once PCAs are aware that they must bid lower than FTB's costs, the PCAs will likely bid at an unrealistically low rate to get the contract. It has been shown in the past that contracts with FTB improve PCAs' chances of getting more lucrative contracts with other government agencies and that PCAs are willing to bid low to contract with FTB. This has historically led to lower recovery rates on collection accounts.

Contract Collections is and has always been a political program and any type of change, either increasing or terminating assignments with PCAs, will generate pressure and publicity from both sides of the outsourcing debate.

E. DMV to Develop and Administer an Amnesty Program

FEDERAL/STATE LAW

Current federal and state laws allow individuals to deduct certain expenses, such as medical expenses, charitable contributions, mortgage interest, and taxes, such as the vehicle license fee (VLF), as itemized deductions. The VLF is considered a personal property tax based on the market value of the motor vehicle.

Annually, California charges individuals and businesses a motor vehicle registration fee on the ownership of motor vehicles. The state DMV administers the fee. The motor vehicle registration fee is made up of a VLF, base registration fee, and other miscellaneous fees.

PROGRAM BACKGROUND

The Legislature transferred the responsibility for collection of delinquent vehicle registration fees to the FTB in 1993. The FTB's Vehicle Registration Collections (VRC) program is responsible for the collection of delinquent registration fees. Accounts referred to FTB are generally 90 days delinquent.

THIS BILL

This bill would require DMV to develop and administer an amnesty program for persons subject to VLF for a four-month period beginning February 1, 2006, to May 31, 2006, inclusive, or during a timeframe ending no later than June 30, 2006.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns.

1. Notices may need to be created specific to DMV accounts in FTB collections. The details of how FTB would administer those accounts in collections remains to be seen and would be determined by how DMV administers the law. It is imperative that DMV and FTB closely communicate amnesty administration procedures and issues to ensure consistency in public service. For example, procedures would need to be developed and staff trained if DMV allows delinquent taxpayers to make amnesty payments at FTB field offices.

2. This bill does not address the relationship between DMV and FTB with regard to the collection of delinquent VLF. As a result, it's not clear what role FTB may be responsible for with regard to the proposed amnesty.

LEGISLATIVE HISTORY

SB 1100 (Senate Budget Comm., Stats. 2004, Ch. 226) provided a new tax amnesty program for taxpayers that are delinquent in their payment of the personal income tax, corporation tax, or the sales and use tax. Penalties and fees (but not interest) would be waived for amnesty participants.

OTHER STATES' INFORMATION

Review of *Florida, Illinois, Massachusetts, Michigan*, *Minnesota*, and *New York* laws found no comparable amnesty program related to VLF. These states were reviewed because of the similarities between California income tax laws and their tax laws.

FISCAL IMPACT

The department's costs to administer this bill cannot be determined until implementation concerns have been resolved, but could be significant depending on FTB's role in administering this provision of the bill.

ECONOMIC IMPACT

Revenue Estimate

FTB defers to DMV for the revenue impact of this provision of the bill.

Revenue Discussion

Since DMV does not possess authority to take involuntary administrative collection actions, such as wage levies, FTB is DMV's collection agent. Any fees collected by DMV via amnesty programs would not be collected by FTB, resulting in a decrease in FTB collections on behalf of DMV.

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